FILED
APR 26 1980
MICHAEL RODAK, JR., CLERK

IN THE

Supreme Court of the United States

OCTOBER TERM, 1979

No. 79-1696

ROBERT ARNOLD, JAMES CAROW, CASEY KLINGBERG, MICHAEL LEBERT and FRED ORTIZ,

Petitioners,

vs.

VILLAGE OF ELK GROVE VILLAGE,

Respondent.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

STANLEY H. JAKALA
3219 Maple Avenue
Berwyn, Illinois 60402
(312) 788-5733
Attorney for Petitioners

Midwest Law Printing Co., Chicago 60601, Financial 6-3988

TABLE OF CONTENTS

	PAGE
OPINIONS BELOW	2
JURISDICTION	3
QUESTIONS PRESENTED	3
CONSTITUTIONAL PROVISIONS INVOLVED	4
STATEMENT OF THE CASE	5
REASONS FOR GRANTING WRIT	7
CONCLUSION	16
APPENDICES:	
A—Memorandum Order of The Honorable George N. Leighton	1a
B—United States Court of Appeals Unpublished Order	2a
C—Smith-Hurd Illinois Annotated Statutes, Chap. 108½, Sec. 3-150	4a
D—Smith-Hurd Illinois Annotated Statutes, Chap. 108½, Sec. 3-111	5a
E—Smith-Hurd Illinois Annotated Statutes, Chap. 108½, Sec. 3-125	6a
F—Elk Grove Village Ordinance No. 1152 dated June 28, 1977	8a

TABLE OF AUTHORITIES

Cases

Allied Structural Steel Company v. Warren Spannaus, et al., 57 L.Ed. 2d (1978) 9, 10, 11
Arnett v. Kennedy, 416 U.S. 134 7
Bishop v. Wood, 44 L.W. 4820 (1976) 7
David Gonzalez v. Calero, 440 F.Supp. 989 (1977) 8
Dodge v. Board of Education, 302 U.S. 74 (1937) 14
Doyle v. Wright, 108 N.Y.S. 2d 473 (1951) 15
Hoar v. City of Yonkers, 295 N.Y. 274 (1946) 15, 16
Koch v. Yunich, 533 F.2d 80 (2d Cir. 1976) 12, 14
Kraus v. Board of Trustees, 72 Ill. App. 3d 833, 390 (1979) 14
Peters v. City of Springfield, 57 Ill. 2d 142 (1974) 13, 14, 15
United States v. City of Chicago, 549 F.2d 415 (1977) .. 7
United States Trust Co. v. New Jersey, 431 U.S. 1 (1977) 10, 11

Constitutional Provisions and Statutory Authorities

United States Constitution:
Contractual Clause, Art. I, Sec. 10, Cls. 1 4
Amendment XIV 4
42 U.S.C. 1983 ..... 3, 6
Smith-Hurd Illinois Annotated Statutes:
Chap. 108½, Sec. 3-111 ..... 13, 5a
Chap. 108½, Sec. 3-125 ..... 6a
Chap. 108½, Sec. 3-150 ..... 2, 4, 6, 8, 9, 14, 4a
Elk Grove Village Ordinance:
dated May 1, 1978 14
dated June 28, 1977 ..... 7, 8

In The

Supreme Court of the United States

October Term, 1979

No.

ROBERT ARNOLD, JAMES CAROW, CASEY KLINGBERG, MICHAEL LEBERT and FRED ORTIZ,

Petitioners,

vs.

VILLAGE OF ELK GROVE VILLAGE,

Respondent.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

Petitioners, Robert Arnold, James Carow, Casey Klingberg, Michael Lebert, and Fred Ortiz, respectfully pray that a writ of certiorari issue to review the judgment entered on January 30, 1980, by the United States Court of Appeals for the Seventh Circuit in its cause No. 79-2019.

OPINIONS BELOW

On August 3, 1979, the Honorable George N. Leighton of the United States District Court for the Northern District of Illinois, Eastern Division, granted the respondent's motion to dismiss the petitioners' complaint which alleged that petitioners had a vested right to annual step-up increases of $1,500 covering a period of three years on the basis of an Elk Grove Village ordinance of June 28, 1977, which provided for such step-up increases and that a subsequent Elk Grove Village ordinance of May 1, 1978, which rescinded the step-up increases of $1,500 per year, constituted an impairment of a vested right in violation of the Contractual Clause, Art. I, Par. 10, Cls. 1 of the United States Constitution and Due Process and Equal Protection clauses of the Fourteenth Amendment of the United States Constitution and civil rights of the petitioners pursuant to 42 U.S.C. 1983.

In addition, the petitioners' complaint alleged that the elimination of the $1,500 annual increase by an Elk Grove Village ordinance rescinding such increases impaired the vested pension rights of the petitioners in contravention of *Ill. Rev. Stat.,* Chap. 108½, Sec. 3-150.

The memorandum opinion of the Honorable George N. Leighton in conjunction with the dismissal of the petitioners' complaint for declaratory judgment and other relief is reprinted herein as App. A.

On January 30, 1980, the United States Court of Appeals for the Seventh Circuit, Chicago, Illinois, affirmed Judge Leighton's ruling which Court of Appeals unpublished order is reprinted as App. B.

JURISDICTION

1. The federal questions were raised by the petitioners' complaint to the effect that the Elk Grove Village ordinance of May 1, 1978, rescinding the annual step-up increases of $1,500 impaired the vested rights of the petitioners in violation of the Contractual Clause, Art. I, Par. 10, Cls. 1 of the United States Constitution and the Due Process and Equal Protection clauses of the Fourteenth Amendment of the United States Constitution and the civil rights of the petitioners pursuant to 42 U.S.C. 1983.

2. The petition for certiorari was filed within ninety days after the entry of the judgment by the United States Court of Appeals for the Seventh Circuit, Chicago, Illinois, on January 30, 1980.

QUESTIONS PRESENTED

1. Did the Elk Grove Village Ordinance passed on June 28, 1977 as Ordinance No. 1152 create vested rights in the petitioners for receiving annual step-up increases of $1,500.00 per year for a period of three years?

2. Did the Elk Grove Village Ordinance of May 1, 1978, entitled "Position Clarification and Salary Plan" impair the vested rights of the petitioners in annual step-up increases of $1,500.00 per year for a period of three years thereby violating the contractual clause, Article 1, Par. 10, Cls. 1 of the United States Constitution and due process and equal protection clauses of the Fourteenth Amendment, and their civil rights pursuant to 42 U.S.C. 1983?

3. Did the Elk Grove Village Ordinance of May 1, 1978, entitled "Position Clarification and Salary Plan" impair the vested pension rights of the petitioners as guaranteed by Illinois Revised Statutes, Chapter 108½, Section 3-150?

CONSTITUTIONAL PROVISIONS INVOLVED

Amendment XIV:

"Section 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

Article I, Section 10:

"No State shall enter into any Treaty, Alliance, or Confederation; grant Letters of Marque and Reprisal, coin Money; emit Bills of Credit; make any Thing but gold and silver Coin a Tender in Payment of Debts; pass any Bill of Attainder, ex post facto Law, or Law impairing the Obligation of Contracts, or grant any Title of Nobility."

STATEMENT OF CASE

That the petitioner, Robert Arnold, was hired as a patrolman on October 13, 1975, and had received two annual step-up increases of $1,500.00, but had not received the step-up increase due October 13, 1978, pursuant to the Elk Grove Village ordinance of May 1, 1978, which eliminated annual step-up increases of $1,500.00 per year covering a period of three years.

That the petitioner, James L. Carow, was hired as a patrolman on October 13, 1975, and had received two annual step-up increases of $1,500.00, but had not received the step-up increase due October 13, 1978, pursuant to the Elk Grove Village ordinance of May 1, 1978, which eliminated annual step-up increases of $1,500.00 per year covering a period of three years.

That the petitioner, Fred Ortiz, was hired as a patrolman on October 14, 1975, and had received two annual step-up increases of $1,500.00 each and had not received the step-up increase due on October 14, 1978, pursuant to the Elk Grove Village ordinance of May 1, 1978, which eliminated annual step-up increases of $1,500.00 per year covering a period of three years.

That the petitioner, Michael T. Lebert, was hired as a patrolman on August 3, 1976, and had received one step-up increase of $1,500.00, but had not received his second step-up increase of $1,500.00, nor does he anticipate receiving his third step-up increase of $1,500.00 pursuant to the Elk Grove Village ordinance of May 1, 1978.

That the petitioner, Casey M. Klingberg, was hired as a patrolman on April 18, 1977, and had received one step-up increase of $1,500.00, but had not received the second step-

up increase of $1,500.00 pursuant to the May 1, 1978, Elk Grove Village ordinance.

On February 26, 1979, the petitioners filed a complaint for declaratory judgment and other relief alleging that the respondents had violated their vested rights to annual step-up increases of $1,500.00 covering a period of three years by the Elk Grove Village ordinance entitled "Position Clarification and Salary Plan" passed on May 1, 1978, thereby violating the United States Constitution relating to impairment of contracts, due process clause and equal protection clause of the Fourteenth Amendment of the United States Constitution and the Civil Rights Act pursuant to 42 U.S.C. 1983. Further, they alleged that their vested pension rights had been impaired contrary to Illinois Revised Statutes, Chapter 108½, Section 3-150.

On August 3, 1979, the Honorable Judge George N. Leighton granted the respondent's motion to dismiss the petitioners' complaint and had filed a memorandum order stating that the petitioners' complaint did not state a cause of action in relation to impairment of contract clauses of the United States Constitution or the ex post facto provision thereof, and that the petitioners did not state a cause of action showing a deprivation of due process, denial of equal protection, or impairment of vested pension rights and that there was no impairment of vested pension rights.

From the judgment order of the Honorable Judge George N. Leighton entered on August 3, 1979, the petitioners filed a Notice of Appeal on August 30, 1979.

On January 30, 1980, the United States Court of Appeals for the Seventh Circuit, Chicago, Illinois, affirmed Judge Leighton's ruling.

REASONS FOR GRANTING WRIT

I.

In connection with the issue of whether the petitioners had vested rights created via the ordinance of Elk Grove Village of June 28, 1977 as Ordinance No. 1152, there is sufficient case law which establishes that vested rights are created by statute or ordinance.

In *Bishop* v. *Wood,* 44 L.W. 4820 (1976), the United States Court stressed the fact that a policeman can only be entitled to a hearing prior to discharge for cause if a state statute provides for such a hearing; that, if such a hearing is provided by state law, then the police officer is entitled to a hearing on the basis of a vested right.

That vested rights concept as expressed in the *Bishop* decision is also reflected in *Arnett* v. *Kennedy,* 416 U.S. 134, wherein the same issue existed; unlike in the *Bishop* matter, the *Arnett* case dealt with a specific statute that did provide for a hearing prior to discharge for cause with the result that the *Arnett* court held that the denial of a hearing to a police officer prior to discharge would be an impairment of a vested right as provided by law.

That concept of vested rights is not restricted to hearings prior to discharge for cause, but is extended to matters of promotions as is evidenced by the decision of the *United States* v. *City of Chicago,* 549 F.2d 415 (1977) in which decision the court held that promotions within the Police Department of the City of Chicago are governed by the Illinois Civil Service Act and that the Civil Service

Act governing promotions in effect creates a vested proprietary right in them.

As the court stated in *David Gonzalez* v. *Calero,* 440 F. Supp. 989 (1977), on page 995, property rights can refer to a number of vested interests as is illustrated by the following language from that opinion:

> "While there is no constitutional right to public employment as such, a property interest protectable under the Fourteenth Amendment can be created by a specific statutory or contractual entitlement, by implied contract or by the "common law of a particular industry or a particular plant". Perry v. Sinderman, 408 U.S. 593 at 601-602, 92 S.Ct. 2694, 2700, 33 L.Ed. 2d 570 (1972) quoting United Steelworkers v. Warner & Gulf Navigation Co., 363 U.S. 574, 579, 80 S.Ct. 1347, 4 L.Ed.2d 1409.
>
> The Supreme Court has recognized that policemen, like teachers and lawyers, are not relegated to a watered-down version of unconstitutional rights". Garrity v. New Jersey, 385 U.S. 493 at 500, 87 S.Ct. 616 at 620, 17 L.Ed.2d 562 (1967); Hanneman v. Breier, supra."

As a result, the Elk Grove Village ordinance of June 28, 1977, providing for the annual step-up increases of $1,500 created a vested right based upon the cited law which vested right, in this instance, became an executed contract when Elk Grove Village paid Robert Arnold two annual step-up increases of $1,500, to Fred Ortiz two annual step-up increases of $1,500, to James L. Carow two annual step-up increases of $1,500, to Michael Lebert one step-up increase of $1,500, and to Casey M. Klingberg one annual step-up increase of $1,500.

At the same time, pensions of police officers are considered vested proprietary rights under *Ill. Rev. Stat.,*

Chap. 108½, Sec. 3-150 which pension rights cannot be modified by home rule units of the State of Illinois. (App. C).

Because the step-up increases of $1,500 are correlated to the types of pension monies petitioners would receive upon their retirement, the argument that the annual $1,500 step-up increases are vested rights is strengthened by the concept that no home rule unit can modify or change the anticipated pension of the petitioners when, in fact, Elk Grove Village had executed the contractual arrangement between the parties as provided by the June 28, 1977, ordinance, by paying some of the step-up increases to the petitioners.

II.

It is well settled that, under the police power of a state, a state can impair vested rights. However, the impairment of such vested rights is not an unlimited power; state statutes that impair vested rights can be violative of the United States Constitution in terms of the contractual clause against impairment of contracts by retroactive application of the statute as to prior created vested rights. *Allied Structural Steel Company* v. *Warren Spannaus, et al.*, 57 L.E.D. 2d (1978); *United States Trust Co.* v. *New Jersey*, 431 U.S. 1, (1977).

In the *Allied Structural Steel Company* decision, the court considered five criteria which would entitle a state legislature to pass a state statute impairing a contract retroactively by specifying the criteria as follows on Page 735 of that decision:

> First, the state legislature had declared in the Act itself that an emergency need for the protection of homeowners existed. Id., at 444, 78 L. Ed. 413, 54 S. Ct. 231, 88 ALR 1481.

Second, the state law was enacted to protect a basic societal interest, not a favored group. Id., at 445, 78 L. Ed. 413, 54 S. Ct. 231, 88 ALR 1481.

Third, the relief was appropriately tailored to the emergency that it was designed to meet. Ibid.

Fourth, the imposed conditions were reasonable. Id., at 445-447, 78 L. Ed. 413, 54 S. Ct. 231, 88 ALR 1481. And finally, the legislation was limited to the duration of the emergency, Id., at 447, 78 L. Ed. 413, 54 S. Ct. 231, 88 ALR 1481.

Applying the five criteria to the Elk Grove Village ordinance, the ordinance does not address itself to any emergency for eliminating the step-up increases of $1,500.00 per year; it was not enacted to protect a basic societal interest, since the ordinance did not enumerate any necessity for economizing village expenditures for the benefit of Elk Grove Village citizens; the elimination of the step-up increases was not tailored to any emergency; the condition of eliminating the step-up increases of $1,500.00 annually was not reasonable in that it deprived the petitioners of monies needed by them and which monies they anticipated based upon their performance as police officers of Elk Grove Village, and that the ordinance was not limited to any duration of an emergency as no emergency was described.

As a consequence, on the basis of *Allied Structural Steel Company,* the Elk Grove Village ordinance eliminating the $1,500.00 annual salary increases did impair the vested rights of the petitioners retroactively in violation of the United States contractual clause.

At the same time, in the *United States Trust Co.* of New York decision, the court further asserts that a vested right can be impaired in violation of the Fourteenth Amendment

of the United States Constitution via retrospective application of newly created statutes to that effect as is evidenced by the following language from that decision:

> "(1) Retrospective civil laws, if sufficiently harsh and oppressive, may violate the due process clause, even when no vested right of any kind has been impaired, 45 LW at 4422, n.13. See also *Usery* v. *Turner Elkhorn Mining Co.*, 428 U.S. 1, 14-20 (1976).
>
> (2) Although there is no vested right to the continued existence of a particular law, a particular law may create or result in a vested right where the "language and circumstances" so indicate, and the right cannot be impaired by repeal of the statute or ordinance, see 45 LW at 4422, n.14. See also *Indiana, ex rel. Anderson* v. *Brank*, 303 U.S. 95, 104-105 (1938).
>
> (3) Although the state may not "contract away" its right to exercise the police power, such a power may not be used to impair a contract or vested right created by the state unless "reasonable and necessary" to accomplish a compelling state purpose that could not have been foreseen at the time the right was created, 45 LW 4425 at n.28.
>
> (4) Where a contract or vested right is completely extinguished by an exercise of the police power, the holders of such a right are entitled to "just compensation" from the state, see 45 LW at 4422, n.16. See *Pennsylvania Coal Co.* v. *Mahon*, 260 U.S. 393 (1922)."

In considering the *United States Trust Co.* of New York four criteria, the *Allied Structural Steel Company* court held on Page 738 that:

> ". . . Yet there is no showing in the record before us that this severe disruption of contractual expectations was necessary to meet an important general social problem. The presumption favoring 'legislative judgment as to the necessity and reasonableness of a particular measure,' . . ."

Therefore, analyzing the Elk Grove Village ordinance entitled "Position Clarification and Salary Plan" which eliminated the annual $1,500.00 step-up increases, there is no showing by the Village of Elk Grove that the ordinance was necessary and reasonable for the purpose of severely disrupting the contractual expectations of the petitioners in their vested rights to step-up annual increases of $1,-500.00 per year in order to meet a *general important social problem.*

If the vested contractual concept as described herein is to be impaired, the newly created ordinance must specify an important general social problem that is being met; for example, salaries can be diminished if there are depressive economic changes in the Village which require such diminution, *Koch* v. *Yumich,* 533 F.2d 80 (2d Cir. 1976).

However, in this instance, the Elk Grove Village ordinance eliminating the step-up increases of $1,500.00 per year does not contain any language within it that adverse economic changes in the Village coffers required the step-up increases of $1,500.00 to be abandoned.

As a result, the Elk Grove Village ordinance which eliminated the $1,500.00 annual increases did, in fact, violate the due process and equal protection clauses of the Fourteenth Amendment of the United States Constitution.

In their complaint, the petitioners state that their $1,500 per year step-up increases in salary for a period of three years are correlated to Illinois state law pertaining to pensions, reprinted herein as Appendix C.

The significance of the petitioners' legal theory is that under Illinois state pension law, as found in Appendix C, the State of Illinois by *affirmative state legislation* has

protected Illinois policemen from home rule units which would tend to modify, change, or alter the guaranteed pensions to which Illinois policemen are entitled.

That the Illinois Legislature by affirmative action intended this type of protection is evidenced by the fact the legislation in question, (App. C), was passed on October 1, 1975, subsequent to the *Peters* v. *The City of Springfield* decision of 1974 which, in effect, altered a fireman's pension when it permitted the City of Springfield, Illinois, to reduce the firemen's mandatory retirement age from 63 to 60.

That the Illinois legislative action of October 1, 1975, forbidding home rule units to encroach upon police pensions, constituted a contract according to the *McCoy* decision on the basis of the following quotation from page 674:

> "When the people of New York wish a contract relationship to exist with any class of State employees, the Constitution specifically so states. In 1938, the people approved a constitutional provision (Article V, Par. 7) that "* * * membership in any pension or retirement system of the state * * * shall be a contractual relationship, the benefits of which shall not be diminished or impaired."

Under *Smith-Hurd Annot. Stat.*, Chap. 108½, Sec. 3-111, a policeman's pension is based upon one-half of the salary attached to the rank held by the police officer one year immediately prior to his retirement. (App. D).

As a consequence, the petitioners' step-up increases of $1,500 per year covering a period of three years, are monies that would be added to their salaries which would serve as a basis for computing their pensions pursuant to the formula outlined in Sec. 3-111.

As a result, the Elk Grove Village ordinance of May 1, 1978, in effect, did modify, change, and alter the amount of monies the petitioners would receive as pensions contrary to Illinois state law, *Ill. Rev. Stat.*, Chap. 108½, Sec. 3-150 which is reprinted herein as Appendix C.

In its unpublished order, the United States Court of Appeals for the Seventh Circuit, cites *Dodge* v. *Board of Education,* 302 U.S. 74 (1937), *Kraus* v. *Board of Trustees,* 72 Ill. App. 3d 833, 390 (1979) and *Koch* v. *Yunich,* 533 F.2d 80 (1976), to support the proposition that legislative acts fixing salaries of public employees do not create contracts in their favor and that the compensation may be altered, and that reductions in salary do not diminish pension benefits within the meaning of the Illinois Act.

In *Dodge* v. *Board of Education,* the teachers did not contribute to their pensions and annuities while the petitioners do contribute to their pensions. (App. E).

Furthermore, in *Dodge,* the court was not confronted with an Illinois statute which prevents home rule units from modifying, altering or changing the pensions of Illinois police officers.

With reference to *Koch* v. *Yunich,* a New York ordinance provided specifically that, if there were adverse conditions, New York City Transit Employees could be demoted.

In this instance, the Elk Grove Village ordinance of June 28, 1977, providing for $1,500 step-up increases did not contain the language as found in the New York ordinance in the *Koch* decision which asserted that salaries could be reduced because of economic reasons.

Likewise, the *Kraus* decision does not apply to the petitioners, since, in *Kraus,* the court relied upon *Peters* v. *City*

of Springfield, 57 Ill. 2d 142 (1974), *Doyle* v. *Wright,* 108 N.Y.S.2d 473 (1951), and *Hoar* v. *City of Yonkers,* 295 N.Y. 274 (1946) to support its position that mandatory retirement age, work hours, and salary may be reduced and that such reductions have merely an indirect effect on the pension benefits ultimately received as distinguished from prohibited legislative acts that would directly affect pension benefits.

However, the *Peters* decision prompted the Illinois Legislature to enact on October 1, 1975, legislation to prohibit home rule units to change, alter or amend *in any way* the Illinois pension provisions. (App. C).

The net result of the aforesaid Illinois legislative action of prohibiting home rule units from altering the Illinois pension system acknowledged that the *Peters* decision in reducing the mandatory retirement age was not an indirect, but direct effect upon pension benefits to be ultimately received and that such mandatory retirement age reduction action would be prohibited in the future.

At the same time, in *Doyle* v. *Wright,* there was an emergency pay and target pay city resolution involved which provided that emergency pay and target pay would not have any bearing on the amount of the pension that would be granted and that no percentage deduction from such emergency pay and target pay would be directed for payment to the pension fund.

In this instance, the Elk Grove Village ordinance that had created the annual step-up increases of $1,500 did not provide that the step-up increases were not to be considered part of the petitioners' salaries and that no percentage contribution by the petitioners, as required by Appendix E, be deducted from their salaries and paid to the pension fund.

When Appendix E is analyzed, salary does not include overtime pay, holiday pay, bonus pay, merit pay, or any other cash benefits over and above the salary established by the appropriate ordinance.

The annual step-up increase of $1,500, in this instance, is an experience pay increase which was included in the salary ordinance No. 1152. (App. F).

As a result, the Elk Grove Village ordinance of May 1, 1978, eliminating the $1,500 annual step-up increase had, in effect, changed, altered and amended the vested rights of the petitioners in attaining a pension based upon one-half of the salary attached to the rank held immediately prior to retirement pursuant to Appendix D.

Furthermore, the *Hoar* v. *City of Yonkers* decision does not support the legal tenet that salaries can be reduced even though pension rights may be affected indirectly, since, in the *Hoar* case, there was an absence of the home rule unit prohibition for changing, altering or amending pensions as found in Illinois law. (App. C).

CONCLUSION

The writ should issue to the United States Court of Appeals for the Seventh Circuit in that the United States Court of Appeals should have reversed the judgment of the Honorable George N. Leighton, Justice for the United States District Court for the Northern District of Illinois, Eastern Division, in that the Elk Grove Village ordinance of May 1, 1978, eliminating the $1,500 annual step-up in-

creases payable to the petitioners as created by a previously enacted Elk Grove Village appropriation ordinance No. 1152 on June 28, 1977, impaired the vested rights of the petitioners in those step-up increases.

Respectfully submitted,

STANLEY H. JAKALA
3219 Maple Avenue
Berwyn, Illinois 60402
(312) 788-5733
Attorney for Petitioners

CERTIFICATE OF GOOD FAITH

I, Stanley H. Jakala, on oath, depose, and state that this Petition for Writ of Certiorari has been filed in good faith and not for purposes of delay.

/s/ Stanley H. Jakala
Attorney for Petitioners

Subscribed and sworn to before me this twenty-fifth day of April, 1980. My commission expires October 31, 1981.

/s/ Phyllis Koerner
Notary Public

APPENDIX A

Memorandum Order of The Honorable George N. Leighton

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

ROBERT ARNOLD, JAMES CAROW, CASEY KLINGBERG, MICHAEL LEBERT and FRED ORTIZ,

Plaintiff,

No. 79 C 721 vs.

VILLAGE OF ELK GROVE VILLAGE,

Defendant.

MEMORANDUM ORDER

Defendant's motion to dismiss plaintiffs' complaint pursuant to Rule 12(b)(6), Fed.R.Civ.P., is sustained. The allegations of the complaint do not state a claim on which relief can be granted, since the ordinance in question does not violate the impairment of contract clause of the United States Constitution, Art. I, §10, cl. 1, or the ex post facto provision thereof. *See United States Trust Co. of New York* v. *New Jersey,* 431 U.S. 1, 17 n. 13, 97 S.Ct. 1505, 1515 (1977).

Additionally, the facts alleged by the plaintiffs do not show deprivation of due process, denial of equal protection, or an impairment of vested pension rights. *See Usery* v. *Turner Elkhorn Mining Co.,* 428 U.S. 1, 96 C.Ct. 2882 (1976); *City of New Orleans* v. *Dukes,* 427 U.S. 297, 96 S.Ct. 2513 (1976); *Koch* v. *Yunich,* 533 F.2d 80, 86 (2d Cir. 1976). Therefore, plaintiffs' suit is dismissed.

So ordered
/s/ George N. Leighton
United States District Judge

Dated: August 3, 1979

APPENDIX B

United States Court of Appeals Unpublished Order

UNITED STATES COURT OF APPEALS
For the Seventh Circuit
Chicago, Illinois 60604

Argued January 25, 1980

January 30, 1980

Before
Hon. Luther M. Swygert, Circuit Judge
Hon. Walter J. Cummings, Circuit Judge
Hon. William J. Bauer, Circuit Judge

ROBERT ARNOLD, JAMES CAROW, CASEY KLINGBERG, MICHAEL LEBERT and FRED ORTIZ,
Plaintiffs-Appellants,

No. 79-2019 vs.

VILLAGE OF ELK GROVE VILLAGE,
Defendant-Appellee.

Appeal from the United States District Court for the Northern District of Illinois, Eastern Division
No. 79-C-721 — George N. Leighton, Judge

ORDER

[Unpublished Order Not To Be Cited Per Circuit Rule 35]

At issue in this appeal is whether the constitutional or statutory rights of plaintiff-patrolmen were violated when the Village of Elk Grove Village adopted an ordinance eliminating a previously enacted salary schedule providing for three annual step increases based on an employee's years of service. Individual plaintiffs had received either

one or two of the three $1,50.00 step increases when the Village voted to eliminate the step increases and adopt instead a new pay plan based on merit and a general salary increase of seven percent. The district court held that plaintiffs did not state a claim on which relief could be granted because the ordinance did not violate plaintiffs' rights under the Contract Clause of the United States Constitution, Art. I § 10 cl. 1, or deprive plaintiffs of due process or equal protection under the Fourteenth Amendment. Further, the trial judge held that plaintiffs' pension rights guaranteed by Ill. Rev. Stat. ch. 108½ ¶¶ 3-150, 3-111 were not impaired. We affirm.

The Supreme Court has made it clear that a legislative act fixing salaries of public employees does not create a contract in their favor, and that the compensation may be altered. *Dodge* v. *Board of Education,* 302 U.S. 74 (1937). In *Allied Structural Steel Co.* v. *Spannaus,* ..... U.S. ....., 98 S.Ct. 2716 (1978); and *United States Trust Co.* v. *New Jersey,* 431 U.S. 1(1977), cited by appellants, violations of the Contract Clause were found because substantial impairment of actual contracts were involved.* In the instant case, there is not a contract. Here there is merely an ordinance. The presumption is that such a legislative act is not intended to create private contractual rights. *Dodge, supra.* Plaintiffs have not sustained their burden of overcoming this presumption.

We also affirm the district court's holding that there were no due process or equal protection violations. The ordinance did not create any vested rights in the step increases, and there was a rational basis for eliminating one salary plan and substituting another. *Usery* v. *Turner Elkhorn Mining Co.,* 428 U.S. 1 (1976); *Confederation of Police* v. *City of Chicago,* 547 F.2d 375 (7th Cir. 1977);

---

* The Supreme Court stated that even when there is an impairment of an actual contractual obligation, the importance of the state's police power may justify the contractual impairment. The severity of the impairment is balanced against the need for the state legislation. *Allied Structural Steel Co.* v. *Spannaus, supra.*

Massachusetts Board of Retirement v. *Murgia,* 427 U.S. 307 (1976).

Appellants argue that the elimination of the step increases violates their pension rights under an Illinois statute which prohibits home rule units from altering the pension arrangements set out therein, Ill. Rev. Stat. ch. 108½ ¶¶ 3-150, 3-111. We do not agree. The Village can change its salary schedule without violating the statutory pension provisions. In *Kraus* v. *Board of Trustees,* 72 Ill. App. 3d 833, 390 N.E.2d 1281 (1979), the Illinois Appellate Court stated that a reduction in salary does not diminish pension benefits within the meaning of the Illinois Act, though it has an indirect effect on the pension benefit actually received. *See Koch* v. *Yunich,* 533 F.2d 80, 86 (2d Cir. 1976).

Affirmed.

APPENDIX C

Smith-Hurd Illinois Annotated Statutes, Chap. 108½, Sec. 3-150

§ 3-150. Applicability of home rule powers

No home rule unit, as defined in the 1970 Illinois Constitution or any amendment thereto, shall have the power to change, alter, or amend in any way the provisions contained in this Article, and no such home rule unit which is a municipality, as defined in Section 3-103, shall provide for, singly or as a part of any plan or program, by any means whatsoever, any type of retirement or annuity benefit to a policeman other than through establishment of a fund as provided in this Article as now or hereafter amended.

Laws 1963, p. 161, § 3-150, added by P.A. 79-988, § 1, eff. Oct. 1, 1975.

Library References

Municipal Corporations—187(1).
C.J.S. Municipal Corporations §§ 588, 589.

APPENDIX D

Smith-Hurd Illinois Annotated Statutes, Chap. 108½, Sec. 3-111

§ 3-111. Pension

Any policeman who has creditable service of 20 years or more and has reached age 50 and who is no longer in the service as a policeman, shall be entitled to a yearly pension equal to ½ of the salary attached to the rank he held on such police force for 1 year immediately prior to his retirement, payable from the police pension fund of the municipality. The pension shall be increased by 2% of such salary for each additional year of such service over 20 years, up to 30 years, and 1% of such salary for each additional year of such service over 30 years, to a maximum limit of 75% of such salary. No pension in effect on or granted after June 30, 1973 shall be less than $200 per month.

Any policeman mandatorily retired from service by reason of age through an operation of law, who has accumulated at least 10 years but less than 20 years of creditable service, shall receive a monthly pension equal to 2½% of the salary attached to the rank he held on the police force for one year immediately prior to retirement for each year of creditable service.

Any policeman who retires or is separated from the service after accumulating at least 10 years but less than 20 years of creditable service, and who is not mandatorily retired by reason of age through an operation of law, shall receive monthly pension after he attains age 60 based on the salary attached to the rank he held on the police force for one year immediately prior to retirement: for 10 years of service, 15% of salary; for 11 years of service, 17.6% of salary; for 12 years of service, 20.4% of salary; for 13 years of service, 23.4% of salary; for 14 years of service, 26.6% of salary; for 15 years of service, 30% of salary;

for 16 years of service, 33.6% of salary; for 17 years of service, 37.4% of salary; for 18 years of service, 41.4% of salary; for 19 years of service, 45.6% of salary.

No retired policeman who re-enters service as a policeman after having retired and who is receiving a pension shall, upon again retiring, be entitled to a larger yearly pension than that received originally upon first retirement unless such policeman remains in police service for at least 5 years and makes contributions at the prescribed rate after which his pension shall be increased at the rate stated above for each year of service during reemployment up to the stipulated maximum.

If the municipality does not contribute to any group hospital and medical plan which includes a retired policeman, or if deceased, his widow, the municipality, shall, upon request, deduct from the pension payment that amount which would be his total portion of the group plan.
Amended by P.A. 79-825, § 1, eff. Oct. 1, 1975; P.A. 79-1165, § 1, eff. Dec. 18, 1975; P.A. 79-1454, § 47, eff. Aug. 31, 1976; P.A. 80-1051, § 1, eff. Oct. 1, 1977.

APPENDIX E

Smith-Hurd Illinois Annotated Statutes, Chap. 108½, Sec. 3-125

§ 3-125. Financing

The city council or the board of trustees of the municipality, as the case may be, shall annually levy a tax upon all the taxable property of the municipality at the rate on the dollar which will produce an amount which, when added to the deductions from the salaries or wages of policemen, and receipts available from all other sources as hereinafter referred to, will equal a sum sufficient to meet the annual requirements of the police pension fund. The annual requirements to be provided by such tax levy shall be equal to the reserve prescribed by Section 3-127.

The tax shall be levied and collected in like manner with general taxes of the municipality, and shall be in addition to all other taxes now or hereafter authorized to be levied upon all property within such municipality, and shall be in addition to the amount authorized to be levied for general purposes as provided by Section 8-3-1 of the Illinois Municipal Code, approved May 29, 1961, as amended.

The police pension fund shall consist of the following moneys which shall be set apart by the treasurer of the municipality.

(1) All moneys derived from the taxes levied hereunder;

(2) Beginning July 1, 1909 and prior to July 23, 1943, 1% of the salary of each policeman (except that prior to July 1, 1921 not more than $1 per month shall be deducted, and except that beginning July 1, 1921 and prior to July 1, 1927 not more than $2 per month shall be deducted), and beginning July 23, 1943 and prior to July 20, 1949, 3% of salary, and beginning July 20, 1949 and prior to July 17, 1959, 5% of salary, and beginning July 17, 1959, and prior to July 1, 1971, 7% of salary, and beginning July 1, 1971 and prior to July 1, 1975, 7½% of salary and beginning July 1, 1975, 8½% of salary; such sums shall be paid or deducted monthly.

For the purposes of this section, the word "salary" means the annual salary including longevity attached to the rank held by the policeman as established by the municipality's appropriation ordinance, but does not include "overtime pay", "holiday pay", "bonus pay", "merit pay", or any other cash benefit over and above the salary established by the appropriation ordinance;

(3) All moneys accumulated by the municipality under any previous legislation establishing a fund for the benefit of disabled or superannuated policemen;

(4) Any donations, gifts or other transfers referred to in this Article.

Amended by P.A. 79-824, § 1, eff. Sept. 5, 1975.

APPENDIX F

Elk Grove Village Ordinance No. 1152
dated June 28, 1977

AN ORDINANCE ESTABLISHING SALARIES
FOR THE POLICE DEPARTMENT
OF THE VILLAGE OF ELK GROVE VILLAGE

NOW, THEREFORE, BE IT ORDAINED by the President and Board of Trustees of the Village of Elk Grove Village, Counties of Cook and DuPage, Illinois:

Section 1. That the salaries for Lieutenants, Sergeants and Patrolmen of the Police Department of the Village of Elk Grove Village shall be and are hereby established as follows:

Length of Service in Elk Grove Village	Police Lieutenant per year	Police Sergeant per year	Police Patrolman per year	Pay Step
Less than one year of experience in rank	$19,660	$17,096	$13,670	A
One year but less than two years experience in rank	21,987	19,135	15,318	B
Two years but less than three years experience in rank	23,900	20,800	16,651	C
Three years but less than four years experience in rank	—	—	18,100	D

Reference to "Length of Service" is applicable only to Patrolmen.

No person presently employed shall receive two (2) experience pay increases within one rank in any twelve (12) month period except upon specific authorization by the President and Board of Trustees.

Section 2. A new Patrolman may be hired in pay step B if he has two (2) or more years of prior police, or equivalent, experience and only in instances when, in the judgment of the Fire and Police Commission, a candidate is exceptionally well qualified.

Section 3. Within ten (10) days from passage of this Ordinance, or at the time of hiring a new Policeman, the Fire and Police Commission of the Village shall ascertain and verify a Policeman's prior police experience, if any. Police experience shall be computed to the nearest month. Periods of more than fifteen (15) days shall be computed as a full month's experience. Upon ascertainment of a Policeman's experience, the Secretary of the Fire and Police Commission shall transmit to the Village Treasurer the following information:

A. Name of Policeman.

B. Effective date of employment with the Village of Elk Grove Village Police Department.

C. Salary anniversary date.

Duplicate copies of the foregoing shall be sent to the Chief of Police, the Village Manager and the Village Clerk.

Section 4. Except as otherwise provided herein, all pay increases resulting either directly or indirectly from police experience acquired as a member of the Police Department of the Village, shall be effective on the first day of the pay period wherein falls the policeman's annual in-rank experience anniversary.

Section 5. This Ordinance shall be in full effect and according to law provided, however, experience pay increases granted present personnel shall be effective as of May 1, 1977.

PASSED this 28th day of June, 1977.

APPROVED this 28th day of June, 1977.

Ayes: 6

Nayes: 0

Absent: 0

Charles J. Zettek
Village President

Attest:

Eleanor G. Turner
Village Clerk